

JUSTIFICATION

Of the Paper, Entitled,

A short History

OF THE

LIFE and DEATH

OF THE

Act made in the 35th of *Eliz.* Cap. 1, &c.

Containing

SOME OBSERVATIONS

ON

That Part of the GAZETT (Published 21th of
April last) which asserts the Contrary.

W H E R E I N

It doth plainly appear (notwithstanding what is therein alledg-
ed) That the said Act of the 35th of *Eliz.* and the Conven-
ticle Act of the 16th of this King, are not in being, nor hath
the force of a Law.

By the same Author.

L O N D O N.

Printed for B. A. and Published by Richard Januway in Queens-
Head-alley in Pater-Noster-Row. 1681.

1
The following is a list of the
names of the persons who have
been appointed to the various
committees of the Board of
Education.

Committee on the
Curriculum

Chairman, Mr. J. H. [illegible]
Members, Mr. [illegible], Mr. [illegible],
Mr. [illegible], Mr. [illegible],
Mr. [illegible], Mr. [illegible]

Committee on the
Finance

Chairman, Mr. [illegible]
Members, Mr. [illegible], Mr. [illegible],
Mr. [illegible], Mr. [illegible],
Mr. [illegible], Mr. [illegible]

Committee on the
Personnel

Chairman, Mr. [illegible]
Members, Mr. [illegible], Mr. [illegible],
Mr. [illegible], Mr. [illegible],
Mr. [illegible], Mr. [illegible]

Committee on the
Physical Education

Chairman, Mr. [illegible]
Members, Mr. [illegible], Mr. [illegible],
Mr. [illegible], Mr. [illegible],
Mr. [illegible], Mr. [illegible]

VINDICATION

Of the Paper Intituled

*A Short History of the Life and Death of the Act
made the 35th of Eliz. Cap. 1.*

BEING A

Reply to the Gazett

Published the 21th. of *April* last past.

Wherein it doth plainly appear, notwithstanding what is therein alledged, That the said Act of the 35th of *Eliz.* and the Co.venticle Act of the 16th of this King, are not in Being, nor hath the force of a Law.

By the same Author.

THE Author hath the same to say (and as justly) for himself, as the Writer of the *Gazett*. *That his Intentions are, and were to undeceive His Majesties Loyal Subjects.*

And therefore he makes no other Excuse or Apology for himself in searching into this Affair. The *Gazett* asserts, *That the Act among others of the 35th of Elizabeth was continued the first of King James until the first Sessions of the next Parliament, which agrees with the Author's Assertion, then he tells us there were four Sessions in that Parliament, the last whereof ended in the 7th of K. James, which does not at all disagree with the Author.*

But the *Gazett* goes on further, *viz. But the Act was to continue to the first Session of the next Parliament; and though every Sessions to some purposes be as a several Parliament, yet it is no such Parliament which can have a first Sessions, and is never in Acts of Parliament stiled the next Sessions;* which is very fairly expressed, and undoubtedly it may be so as he hath put it, that to some purposes be as a several Parliament upon Prorogations ending still every Sessions. And I believe also it hath been a doubt heretofore among Lawyers, whether a Prorogued Parliament be not as a New Parliament; however admitting it to be otherwise, that it must be a New Parliament that must discontinue the Act of the 35th of *Elizabeth*; yet I conceive the matter depends not there for this Reason. He admits, and it is owned on all hands,

See 18 Jac.
the 3d Re-
cord, but
not in the
Rolls a-
mong the
rest of the
Acts.

hands, as well as by the Records, That the Parliament of the first of K. James did end the seventh of K. James, and then a New one was called the 12th of K. James, which as he tells us, did nothing so that the continuing Act continued to another Sessions, which Sessions began and ended in the 18th of K. James, and passed two Bills, as he grants it, and as in truth it is upon Record: Now if it be so that any Acts were made in this Parliam. of the 18. of K. James, as undoubtedly they were, then that must be called a Sessions of Parliament, and such a Sessions as the 1. of K. James mentions to be continued to the first Sessions of the next Parliament; and this Session of the 18 of K. James, making no continuance of the 35th of Eliz. it must inevitably follow to be wholly expired, and as if the same had never been made.

And as the *Gazett* tells us, the Judges did give their Opinion, that it was not in force, it is agreed.

See Roll
21 Jac. cap.
18. sect. 1.

But now see what the Parliam. did in the 21th of K. James, among other Acts they intended to continue and revive, they enact, *viz*) Shall by virtue of this Act be adjudged ever since the Session of Parliament in the 7th of His Majesties Reign of England, to have been of such force and effect as the same were the last day of that Session, and from thenceforth until the end of the first Session of the next Parliament.

Which words, the *Gazett* would make us believe, is a Reviver of the Act of the 35th of Eliz. but by his good leave, and with submission to better Judgment, it cannot be for this Reason.

If in the 18. *Jacobi*, it was wholly dead, as is most clear, then nothing but an absolute Reviver could set it up again, and this is none but only a continuance of some thing supposed to be in being; now this was not in being 18. *Jacobi* although it might be 7. *Jacobi*. And therefore there wanting the word Reviver, I conceive did not reach the point; for nothing but Reviver can inforce a dead Act, and declaring it in force will not do, if really it were otherwise. And to confirm this Opinion in the very same Act of 21 Jac. afterwards in Section 8, 9, 10. mention is made of several Statutes to be revived, which I have set down at large.

21. Jac. cap.
28. sect. 8.
9. 10.

Viz. And be it also enacted, That one part of a Statute made in the 25th year of the Reign of the late King Henry the 8th, Entituled an Act to the Reduction of Wild Fowl, which was repealed by a later Act made in the Parliament holden in the 3d and 4th years of the Reign of the late King Edward the 6th, shall be revived and stand in force until the end of the first Session of the next Parliament.

And be it also Enacted, That one Act made in the first year of the late Queen Mary, for and concerning the making, repairing and amending the common high-way, Causeway in the Counties of Dorset and Somerset, between the Towns of Shaftesbury and Sherborn in the County of Dorset be revived and stand in force until the end of the first Session of next Parliament.

Besides Presidents there are abundance more in the Statute Book all along, which shew that such Statutes which were either repealed or expired, was always set up again by Reviver in express Terms, judging and declaring their continuance of such Laws when once dead being never thought sufficient to revive, which is the present case.

And the Reason given is because there is a difference between continuing of a Law, that was never out of being, and the setting up a dead Law, as in this case.

And

And that this Law of the 35 of *Eliz.* was hold to be void as 20 *Jac.* appears by good Authority in our Law-books.

Now there was no other setting up of this Statute of 35 of *Eliz.* from 21 *Jac.* to 3 *Car. primi*, than what is expressed in 3 *Car. pri.* cap. 4 which expresses thus, (*viz.*) *Shall continue in force until the end of the first Sessions of the next Parliament.*

Huttons report, 61 and 62. in the 20 *Jac.*

3 *Car. pri.* cap. 4. sect. 22.

But admit all that hath been said before, were of no value at all, how can the Person that writes the *Gazets* think or imagine that he hath really answered the point, when it is plain he hath only touched upon one part of that Pamphlet, as he calls it, and not given one word of Answer to the other, which is the latter part of the Argument in the History? but instead of meddling with that, slides over the matter, and tells the World, that the Act against Conventicles made the 22d of the King, is still in force, though the Act made in the 16 be expired; truly I think if ever he read over the Pamphlet (as he terms it) he cannot find any thing in it did assert, that the Act of the 22 of this King against Conventicles was not in force, so that he might have spared himself that labour.

On the other hand I am as sure, that in that Act made the 22d of this King against Conventicles which is perpetual, has no manner of reference to that of the 35 of *Eliz.* or to that Conventicle Act made the 16 year of this King; for there is not the least mention made of either by this last Conventicle Act as the Reader may please to see at his Leisure.

But since he hath been pleased not to touch upon this part for the satisfaction of His Majesties Loyal Subjects, and to clear the doubt if there be any, I would desire that he or any other person will but consider again the 7 *Apige* of the short History of the Life and Death of the 35th of *Eliz.* and compare the same with the Act against Conventicles made the 16th of this King, which is also set down in the same Paper and page, and consider them well together, especially this point following which is his.

See History p. 7.

From the 3. *Car. pri.* to 16. *Car. pri.* as before is expressed, there is no mention of the 35 of *Eliz.* but in the said 16th an Act passed (*viz.*) And be it Enacted by the Authority aforesaid, That the passing of this present Act or any other Act or Acts, or His Majesties Royal Assent to them or any of them in this present Session of Parliament, shall not be any determination of the said Session, and that all Statutes and Acts of Parliament made in the 31 year of the Reign of His Majesty that now is, Entitled an Act for the Continuance and Repeal of divers Statutes continued until the end of the first Session of the then next Parliament, shall by virtue of this Act, be adjudged ever since the Sessions of Parliament in the said 31 year to have been of such force and effect at the same were the last day of that Session, & from thenceforth, until some other Act of Parliament be made touching the continuance or discontinuance of the said Statutes and Acts in the said Act of the 31 year of His Majesties Reign continued as aforesaid.

See 16 *Car. pri.* c. p. 4. recited in the History.

to

1 *Car. pri.* cap. 4.

Now let the Reader observe, that this Act wherein the 35 of *Eliz.* was one among the rest mentioned, to be and continue until some other Act were made (touching the continuance or discontinuance of the same) was according to such Interpretation explained and touched upon in the

Act of Parliament mentioned in the 16 of this King, in which Act of the 16 of this King called the Conventicle Act as in the History is hinted that Parliament doth declare in the Conventicle Act then made that the 35 of *Eliz.* shall be in force and put in due Execution for such and such reasons as in the Act is expressed, but for how long, why it is most plain to the end of the next Sessions of Parliament, and then for Three Years, and from thence to the end of the next Sessions of Parliament, which was finished in the 22d of this King, and no longer saith the Act plainly except the Reader will take one part of the Conventicle Act to be for ever and the other part to be for the time fixed, which is a plain contradiction, it being but one entire Act, and to give the due exposition of an Act must be to take the whole together, and the concluding part certainly binds up all; there was the then continuance and discontinuance mentioned in 16 *Car. pri.*

And it cannot be thought that any one will aver, That the declaring part of this Act of 16 *Car. 2d* shall be for ever, when all the rest of the Act was to be but for a time; neither can any one believe that we should go back to 3 *Car. primi.* after this Act had brought it forward to the end of this Conventicle Act. And if the Reader will give himself the trouble but to compare the 35th of *Eliz.* with this Conventicle Act, he will find that they were both absolutely Conventicle Acts, and no other, and being sojoynd, was never meant or intended to be parted.

This then I take to be the Case upon the whole matter, that if the continuing and adjudging in 21 *Jac.* was well continued, and so in *Car. pri.* well continued as is before set down, until some good Lawyer does declare it, I cannot but make a great doubt thereof, yet certainly this Act of 16 *Carol. secund.* doth according to the true meaning of 16 *Carol. primi.* both continue and discontinue the 35th of *Eliz.* and the same cannot again go back to 16 *Carol. pri.* after the expiration of the Conventicle Act of 16 *Car. 2d.*

But the Objection which is expected to be made is this, that the declaring and adjudging to be continued the Act of the 35 of *Eliz.* in King *James*, and King *Charles* the First times is as good as an enacting clause to revive the same.

To which I answer, if that be so, then I hope the same declaring clause in 16 *Carol. secund.* in the Conventicle Act, is a good enacting clause too, and if that be an enacting clause, then it fully answers the intent and meaning of 16 *Carol. primi.* which saith such Acts shall continue only until some other Act be made touching the continuing or discontinuing of the same, so that take it either way it comes to the same end which is a ceasing and expiration of the 35 of *Eliz.* by the said Conventicle Act of 16 *Car. secund.*

POSTSCRIPT

POSTSCRIPT.

BEcause it is so positively asserted, that the Parliament *primi Jac.* and the P. 3. *Jacob.* was one and the same Parliament, I will not undertake to determine, but refer the Reader to these two Copies of the Record, which I attest to be truly compared.

In Parlamento inchoat. tent. apud Westm. decimo nono die Martii Anno Regni serenissimi atque excellentissimi Dom. nostri Jacobi, Dei gra. Ang. Scotiæ, Franciæ & Hiberniæ Regis, Fidei Defensoris, &c. viz. Angl. Franc. & Hiberniæ primo, & Scotiæ tricesimo septimo, atq; ibidem continuat. usque ad in septimum diem Julii tunc Prox. sequent. & prorogat. usque ad in septimum diem Februarii prox. sequent. coram omn. Dom. tam spiritual. quam temporal. & Communitatis consensu & Reg. Majestatis tunc præsentis assensu inter alia sancit. inactitat. ordinat. & stabilit. fuerunt sequent. hæc Statuta ad verbum ut sequitur, videlicet,

In Parlamento inchoat. & tent. per prorogationem apud Westm. quinto die Novembris Anno Regni serenissimi atque excellentissimi Dom. nostri Jacobi Dei gratia, Ang. Sco. Fra. & Hib. Regis, Fidei Defensoris, &c. videlicet Angl. Fran. & Hib. tertio, & Sco. tricesimo nono, atque ibid. continuato usque ad & in vicesimum septem diem Maii, tunc prox. sequentis coram omnibus Dom. tam spiritual. quam temporal. & Communitatis consensu & Reg. Majestatis tunc præsentis assensu inter alia sancita, inactitata, ordinata, & stabilita fuerunt sequentia hæc Statuta ad verbum ut sequitur.

If these two Records be adjudged to be but one and the same Parliament, it is certainly the first Parliament that ever had two several Commencements, besides a distinct Prorogation, which has no coherence, and is a new tract from all other Parliaments.

FINIS.